

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

MACA.No. 2078 of 2009 ()

AGAINST THE AWARD IN OPMV 3675/2001 of M.A.C.T., ERNAKULAM DATED
28-04-2008

APPELLANT/PETITIONER:

ASHIM CHERIYAN, S/O.CHERIYAN,
THURUTHIPALLIL, KODUVATHARA ROAD, EDAPPALLY P.O.
PADIVATTOM, KOCHI-24.

BY ADVS.SRI.K.JANARDHANAN
SRI.MANURAJ. K.J

RESPONDENTS/RESPONDENTS

1. N.RAVIKUMAR, TC 37/131/(1),
PADMAVILASOM ROAD, PAZHAVANGADI, FORT TRIVANDRUM.
(DELETED)

2. MUHAMMAD SHAFI, S/O.UMMERKANNU RAVUTHER,
WEST OF KOYIKKARA CINEMA THEATRE, KAITHAKKADU
KALATHUPUZHA VILLAGE, QUILON (DELETED)

3. THE ORIENTAL INSURANCE CO.LTD.,
M.G.ROAD, ERNAKULAM.

* RESPONDENT NO.2 IS DELETED FROM THE PARTY ARRAY AT THE
RISK OF THE APPELLANT VIDE ORDER DATED 5.2.2013 IN
I.A.NO.274/2013

* RESPONDENT NO.1 IS DELETED FROM THE PARTY ARRAY AT THE RISK
OF THE APPELLANT VIDE ORDER DATED 24.3.2015 IN
I.A.NO.1138/2015

R3 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 30-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R.RAMACHANDRAN NAIR &
P.V.ASHA, JJ.**

M.A.C.A.No.2078 OF 2009

Dated this the 30th day of March, 2015

JUDGMENT

Asha, J.

The appellant is the injured in a motor vehicle accident which occurred on 11.10.2001. He was riding on a motor cycle as pillion rider when it was hit by a Qualis car which took sudden turn without any signal. The appellant sustained severe injuries and was taken to the hospital and undergone inpatient treatment for a period of 12 days.

2. The claim petition was filed seeking compensation to the tune of ₹2,50,000/-. The Tribunal awarded a sum of ₹78,500/- as compensation. The Tribunal also found that the rider of the motor cycle was negligent and 25% of the award amount was deducted towards contributory negligence.

3. This appeal is filed seeking enhancement of compensation while challenging the contributory negligence and consequential reduction of the compensation awarded.

4. We heard the learned counsel appearing on either side.

5. The learned counsel for the appellant pointed out that in the charge filed by the police, the driver of the Qualis alone was implicated as accused and therefore the finding regarding contributory negligence of the rider of the motor cycle was unwarranted. On a perusal of the charge, which is filed before the Judicial First Class Magistrate Court, we find that the rider of the motor cycle was not implicated for the offence and therefore the finding regarding contributory negligence was unwarranted. The same is vacated and therefore the appellant will be entitled to the entire amount of compensation.

6. The appellant sustained the following injuries :

Contusion on occipital region, (R) parietal region, on
(R) thigh, abrasions on the forehead, (R) upper arm,
(L) elbow, laceration on (R) knee and fracture of (R)
femur.

7. The appellant underwent inpatient treatment for a period upto 22.10.2001. During the period, he underwent wound debridment and skeletal traction and interlocking nailing of (R) femur. Again on

30.10.2001 he was admitted in the hospital for removal of sutures and he was advised partial weight bearing walking from 1.12.2001. The Tribunal awarded a sum of ₹ 7,500/- towards loss of earnings @ ₹2,500/-. It is submitted by the learned counsel for the appellant that the income reckoned by the Tribunal is low. It is also submitted that a sum of ₹2,000/- alone is awarded towards transportation, hospitalization, attendant expenses, extra nourishment and damage to clothing altogether. As the appellant underwent inpatient treatment for a period of 12 days, we award a sum of ₹1,800/- (12 x 150) towards attendant expenses. We award a sum of ₹ 500/- towards damage to clothings also in addition to ₹2000/- awarded by the Tribunal. The Tribunal has awarded ₹18,000/- towards pain and suffering. Having regard to the fact that the appellant had to undergo treatment for the injuries he sustained as above including fracture of femur and had to keep away from work for a period of three months as found by the Tribunal, we award a sum of ₹30,000/- towards pain and suffering. No further modification is found necessary on any other heads.

8. Accordingly, the award passed by the Tribunal is modified

as follows :

<i>Head of claim</i>	<i>Amount awarded by the Tribunal</i>
Transportation, hospitalization, extra nourishment	2000
Damage to clothings	500
Medical expenses	39000
Attendant expenses	1800
Loss of earnings	7500
Pain and suffering	30000
Discomforts and inconvenience	12000
Total	92800 (Rupees ninety two thousand eight hundred only)

9. The enhanced amount will carry interest @ 9% per annum.

The Insurance Company shall deposit the amount less the amount already deposited within a period of three months from the date of receipt of a copy of this judgment. The appellant will be entitled to entire compensation without any deduction.

The appeal is accordingly allowed.

T.R.RAMACHANDRAN NAIR, JUDGE

SV.

P.VASHA, JUDGE